

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of FRANK W. MANNING and EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, DISTRICT OFFICE, Charlotte, NC

*Docket No. 97-1505; Submitted on the Record;
Issued August 4, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was untimely filed within the one-year time limitation period set forth in 20 C.F.R. § 10.138(b)(2) and did not demonstrate clear evidence of error.

Appellant, a 39-year-old investigator, was involved in an automobile accident on July 10, 1986, injuring his back, his shoulder, both arms and both legs as a result. Appellant filed a Form CA-1 claim for benefits based on traumatic injury on July 23, 1986, which the Office accepted for cervical strain, lumbar strain with right sciatica and contusion of the left shoulder by letter dated October 22, 1986. Appellant stopped working in 1986 and was eventually placed on the periodic rolls.

By letters dated April 21, 1993 and February 1, 1994, the Office informed appellant that in order to continue receiving compensation, he was required to submit an updated medical report indicating his current condition and stating whether he was currently disabled as a result of his July 10, 1986 employment injury.¹ Appellant did not respond to these requests, and the Office was unsuccessful in attempting to contact him by telephone.

By letter dated June 17, 1994, the Office advised appellant that it had scheduled him for a second opinion examination for July 1, 1994. The Office informed appellant that, pursuant to section 8123(d),² if he refused to submit to or obstructed the examination, his right to compensation would be suspended until the refusal or obstruction stopped, and that

¹ By letter dated February 1, 1994, the Office informed the employing establishment that appellant had changed his address. By letter dated August 24, 1994, the employing establishment advised the Office that it had been attempting to return appellant to work since 1991, but had been unable to obtain work restrictions.

² 5 U.S.C. § 8123(d).

compensation was not payable during the period of refusal or obstruction. Appellant failed to appear at the examination and did not respond to the letter.

By decision dated August 9, 1994, the Office suspended appellant's compensation effective July 24, 1994 on the grounds that he refused to appear at a medical examination ordered pursuant to section 8123.

By letter dated July 20, 1996, appellant requested reconsideration of his claim. In his letter, appellant indicated that he had no personal knowledge of the Office's August 9, 1994 decision to suspend his compensation until July 5, 1996, when his wife, who had been responsible for handling the family's financial affairs and paying the family's bills, informed him that he was in dire financial straits because he had not been receiving compensation from the Office since August 1994. Appellant explained that his wife experienced a nervous breakdown on July 5, 1996, and stated that she had not informed him of this matter because she believed he was so ill at that time that she feared he would suffer a heart attack upon being informed. Appellant related that his wife told him she had received the Office's decision suspending compensation "in the summer of 1994" and had attempted to have his treating physician submit an update of his medical condition by letter dated July 25, 1994, a copy of which was attached to the request for reconsideration. Appellant argued that his was an extraordinary situation and stated:

"I will comply with any requests OWCP requires so that the obstruction can be removed from my case file and my compensation can be reinstated."

Accompanying the request was a July 22, 1996 report from his treating physician.

By decision dated October 22, 1996, the Office denied reconsideration without a merit review, finding appellant had not timely requested reconsideration and that the evidence submitted did not present clear evidence of error. The Office stated that appellant was required to present evidence which, on its face, showed that the Office made an error, and that there was no evidence submitted that showed the prior decision was in error. The Office therefore denied appellant's request for reconsideration because it was not received within the one-year time limit pursuant to 20 C.F.R. § 10.138(b)(2).

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.³ As appellant filed his appeal with the Board on January 17, 1997, the only decision properly before the Board is the October 22, 1996 decision.

The Board finds that the case is not in posture for decision.

The record indicates that the Office's August 9, 1994 decision properly suspended appellant's compensation effective July 24, 1994, as he refused to appear at a medical examination ordered pursuant to section 8123. However, the Board finds that the Office

³ 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

improperly neglected to act on appellant's willingness to comply, as indicated in his July 20, 1996 letter. Pursuant to 20 C.F.R. § 10.407(b), there is no time limit on a claimant expressing to a willingness to comply. The Office, however, has not responded to appellant's contention as it construed appellant's July 20, 1996 letter as simply a request for reconsideration of the August 9, 1994 suspension order. In fact, appellant was attempting to have the suspension removed. The Board therefore vacates the Office's October 22, 1996 decision and remands the case for the Office to address the issue of whether appellant's compensation should be reinstated pursuant to his July 20, 1996 request pursuant to 20 C.F.R. § 10.407(b).

The October 22, 1996 decision of the Office of Workers' Compensation Programs is hereby vacated and remanded to the Office for a determination on the issue of reinstatement of appellant's compensation.

Dated, Washington, D.C.
August 4, 1999

George E. Rivers
Member

David S. Gerson
Member

Michael E. Groom
Alternate Member